IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JOSE MUNOZ, Defendant.	**MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SEVER** Case No. 2:14-cr-00154 District Judge David Nuffer

The Defendant José Munoz moves under Rule 14 of the Federal Rules of Criminal Procedure to sever his case from the remaining joint defendants.[1] Upon careful review of the parties' memoranda, Mr. Munoz's Motion to Sever is DENIED for the reasons set forth below.

BACKGROUND

According to the facts stated in the briefing, on or about June 13, 2013, two of Mr. Munoz's co-defendants, Carlos Tenengueno and Alejandro Arciniega-Zetin, delivered illicit drugs to an auto shop and received $20,000 in cash.[2] At the auto shop, which was heavily surveilled, Mr. Tenengueno was seen making a phone call.[3] Shortly thereafter, Mr. Munoz arrived and Mr. Tenengueno, who was carrying the $20,000, got into Mr. Munoz's vehicle.[4] While in transit, the Salt Lake City Police Department stopped Mr. Munoz and Mr. Tenengueno and seized the $20,000.[5] Because of the volume of evidence, most concerning other co-

[1] Motion to Sever, docket no. 238, filed Feb. 9, 2015.

[2] Government's Response to Defendant's Motion to Sever ("Government's Response"), at 2, docket no. 242, filed Feb. 11, 2015.

[3] *Id.* at 2.

[4] Motion to Sever, at 2; Government's Response, at 2.

[5] Motion to Sever, at 2; Government's Response, at 2.

defendants, and the perceived risk of an unfair criminal proceeding, Mr. Munoz argues his trial should be severed from the trial of the other co-defendants.

ANALYSIS

"In order to obtain a severance, a defendant must show clear prejudice resulting from joinder at trial."[6] When the defendant does not have a right to the severance, severance is a matter of discretion, and "'the defendant must bear a heavy burden of showing real prejudice to his case.'"[7] The burden requires showing "that the denial of severance would result in actual prejudice to his defense . . . and that this prejudice would outweigh the expense and inconvenience of separate trials."[8] Thus, it is not sufficient to simply show that "a defendant would have a better chance of acquittal in a separate trial, or [to complain] of the spill-over effect of damaging evidence presented against a codefendant."[9]

To attempt to meet this heavy burden, Mr. Munoz argues that "[m]ost of the other defendants have a considerably larger involvement in the overall investigation, and are quoted in hundreds or thousands of the relevant pages [of evidence]."[10] This disproportionate distribution of evidence, Mr. Munoz claims, increases the likelihood of confusing a jury, has potential to violate the Confrontation Clause, and could cause numerous hearsay and relevancy objections.[11] But Mr. Munoz does not provide specific examples of actual prejudice, relying instead on broad issues that are likely to affect many cases with co-defendants.[12] If merely establishing that there

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[6] *United States v. Strand*, 617 F.2d 571, 575 (10th Cir. 1980).

[7] *United States v. Zander*, No. 2:10-cr-1088 DN, 2012 WL 5416197, *1 (D. Utah Nov. 2, 2012) (quoting *United States v. Petersen*, 611 F.2d 1313, 1331 (10th Cir. 1979)).

[8] *United States v. Hutchinson*, 573 F.3d 1011, 1025 (10th Cir. 2009) (internal citations omitted).

[9] *United States v. Morgan*, 748 F.3d 1024, 1043 (10th Cir. 2014).

[10] Motion to Sever, at 3.

[11] *Id.* at 3–4, 7.

[12] *See id.*

are multiple co-defendants and a large pool of evidence sufficiently shows that there would be incurable jury confusion and violations of the Confrontation Clause, then defendants would always have a separate trial. This is not the rule, however.

In *United States v. Morgan*[13] the defendant similarly moved for severance due to anticipated prejudice from the evidence against other defendants.[14] Nevertheless, the Tenth Circuit affirmed the district court's decision that the prejudice from the "spillover effect of damaging evidence" was not sufficient grounds for severance.[15]

Furthermore, Mr. Munoz has not shown his potential prejudice cannot be cured with limiting instructions. Though he cites *Bruton v. United States*, stating that "[l]imiting instructions to the jury may not in fact erase the prejudice" to co-defendants,[16] the case does not hold that jury instructions cannot be curative in any circumstances. In *Zafiro v. United States*,[17] all defendants moved for severance because their defenses to the drug charges were all mutually antagonistic. But the Supreme Court recommended jury instructions to "cure any risk of prejudice."[18] And the Tenth Circuit has held that "[a] central assumption of our jurisprudence is that juries follow the instructions they receive."[19] Therefore, without a specific showing otherwise, jury instructions will cure any potential prejudice to Mr. Munoz.

Courts have a compelling interest "rooted in judicial efficiency"[20] to group defendants together when the charges are interrelated and the same witnesses would be summoned to

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[13] 748 F.3d 1024, (10th Cir. 2014).

[14] *Id.* at 1030.

[15] *Id.* at 1043.

[16] *Bruton v. United States*, 391 U.S. 123, 132 (1968).

[17] 506 U.S. 534 (1993).

[18] *Id.* at 539.

[19] *United States v. Castillo*, 140 F.3d 874, 884 (10th Cir. 1998).

[20] *United States v. Olsen*, 519 F.3d 1096, 1103 (10th Cir. 2008).

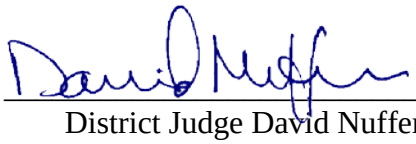
court.[21] Though this interest certainly does not trump Mr. Munoz's right to due process and a fair trial,[22] Mr. Munoz has not met his heavy burden of establishing real prejudice.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Mr. Munoz's Motion to Sever[23] is DENIED.

Signed September 16, 2015.

BY THE COURT



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[21] *United States v. Bailey*, 952 F.2d 363, 365 (10th Cir. 1991).

[22] *Bruton*, 391 U.S. at 134 (quoting *People v. Fisher*, 164 N.E. 336, 341(N.Y. 1928) (Lehman, J., dissenting).

[23] Docket no. 238, filed Feb. 9, 2015.